IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2414 OF 2007.

D.P.Bothara & others. ... Petitioners.

Versus.

Commandant (In charge)
State Reserve Police Force,
Group No.5 and others. ... Respondents.

Shri S.P.Paigude for the Petitioners.

Ms.Mhaispurkar, A.G.P. for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 19th June, 2007.

P.C.:

1. On 9th April 2007 notice for final disposal of the writ petition has been issued. Heard the learned Advocates appearing for the parties. By the order impugned in this writ petition under Article 227 of the Constitution of India, the Petitioners have challenged the order dated 17th March 2007 passed by the learned District Judge-I, Baramati, Pune by which an application for condonation of delay made by the Petitioners has been rejected.

2. The Petitioners are the original Plaintiffs in a suit filed by them against the Respondents. The suit was dismissed by the trial Court by Judgment and order dated 8th February 2006. An Appeal was preferred against the decree passed by the trial Court on 29th June 2006 along with an application for condonation of

delay. The delay was of about 30 days.

3. As stated earlier, the decree was passed on 8th February 2006. The Application for certified copy was made on the very day and the copies were delivered on 28th February 2006. It must be noted here that after the decree was passed by the trial Court, the Petitioners were advised to file a Writ Petition in this Court which was disposed on 15th February 2006.

4. The learned District Judge has found fault with the application made by the Petitioners on the ground that the same was not properly verified in accordance with the provisions of the Code of Civil Procedure, 1908.

5. The averments made in the petition and the annexures thereto show that the Application for condonation of delay was supported by an affidavit of the 1st Petitioner. In the said affidavit, it is categorically asserted that the Petitioners were under a bonafide belief that the period of limitation for preferring an Appeal is 90 days and that is the reason why there is a delay in preferring the Appeal.

6. It is true that the Application is not verified properly. However, there is a detailed affidavit in

support filed by the 1st Petitioner. The delay was only of about 30 days. Considering the grounds pleaded in the Application for condonation of delay and the affidavit in support, the Appellate Court ought to have adopted a liberal approach and condoned the delay. Hence this petition must succeed.

7. Hence the writ petition is disposed of by the following order:

(i) The impugned Judgment and Order dated 17th March 2007 is quashed and set aside.

(ii) Miscellaneous Application No.100 of 2006 is allowed. Delay in preferring the Appeal is condoned.

(iii) The Appellate Court will proceed with the Appeal in accordance with the law.

Judge.